

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION)
OF CONNOR'S AQUACULTURE, INC.)
FOR RENEWAL OF AN AQUACULTURE)
LEASE LOCATED IN JOHNSON BAY,)
LUBEC, WASHINGTON COUNTY, MAINE)

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION

On April 4, 1997, Connor's Aquaculture, Inc. ("the company" or "the applicant") applied for a renewal of an aquaculture lease issued to it on September 1, 1987. The application requested a ten-year renewal to September 2, 2007 of a 5 acre finfish lease located in Johnson Bay, Lubec, Maine.

Notice of the application for lease renewal was published in the September edition of Commercial Fisheries News and the August 22, 1997 and September 12, 1997 issues of The Quoddy Tides. Members of the public and interested parties were given until September 20, 1997 to request a hearing on the application for lease renewal. A request for a hearing on this application was received by the Department on September 17, 1997. A public hearing on this renewal was held November 17, 1997, at 7:00 p.m. at the Lubec Consolidated School Cafetorium, Lubec, Maine.

Applications for aquaculture lease renewals are governed by 12 M.R.S.A., §6072(12), which provides that the Commissioner may renew an aquaculture lease if the lessee has complied with the original lease agreement during its term, aquaculture has been conducted on the original lease, it is in the best interest of the state to renew the lease and the renewal will not cause the lessee to be a tenant of any kind in aquaculture leases covering an aggregate of more than 150 acres.

Evidence Introduced Concerning the Nature

and Impact of the Proposed Lease

The president of the company presented testimony on behalf of the applicant. He testified that the area has been active since July 1990 when the business was acquired from Ocean Products, Inc. The company has complied with all DMR requirements, including removal of nets dropped to the bottom on the lease. He described changes and improvements that have occurred over the years. These improvements include reduction of feed quantities, use of a single year class of fish instead of two year classes, off-site harvesting, reduction in the number of feed deliveries, implementation of disinfectant procedures and disease controls, and fewer personnel on the farm site created by increased efficiency which has reduced the overall activity on site and reduced visual impact. The company conducts weekly garbage clean ups on the shore up to Comstock Point whether the refuse belongs to the company or not. The witness stated that 90% of the refuse collected does not come from its operation and consists in part of milk cartons, and oil or radiator fluid containers.

Regarding the two existing lease conditions, 1. to allow lobster fishing, he stated no one had requested to do this, and 2. marking of the boundary, he stated has been handled by placing buoys on lines to each anchor. The method of marking has been changed in recent years by statutory requirements to provide proximity markers of distances to the pens for draggers. He stated there is usually one dragger who works this area. He testified that the mooring anchors have neither moved or been intentionally moved during the past 4-5 years however he stated that he recognizes some shifting might have occurred.

He testified that the company operates two 20 pen systems moored parallel to the shore and that the dimensions of the lease boundaries have not changed. He testified the company was willing to drop the unused portion of this 5 acre lease which is nearest to the shore.

The son of a riparian landowner requested the public hearing to discuss whether the lease be renewed based on his views of impacts caused by this lease. He testified in opposition to the renewal of the lease. He described his dislike of the abundance of beach grass growing on his parents' shore and stated that this was caused by salmon feed and the operations of the salmon farm. He stated that prior to 1987 there was a negligible amount of beach grass in this area. He testified about the levels of refuse and garbage on the shore and expressed concern for undefined toxins, described as fish wastes and feed, or man made substances on the shore attributed to the salmon farm. He stated that he felt that the fish pens have altered the tides, water currents and waves and also contribute to the growth of beach grass on the shore.

He stated the fish pens were outside of the lease boundaries and that the pens have been moved northerly to in front of his parents' property. He stated this affects the potential property value for future development and spoils their view. He also complained that his parents' property taxes have increased.

He requested that the applicant be required to label its buoys to distinguish them from others and keep records of all buoys that are lost. He considers the buoys a nuisance and feels it is unsafe to sail due to the moorings. He stated that the applicant was not a good neighbor, and that the workers used profanity. He also questioned the company's husbandry practices. He was also upset that it is a Canadian company and felt it did not employ persons from Lubec.

He provided a copy of the letter requesting the public hearing and a copy of a journal he wrote of observations of the shore taken November 20, 1993 on which he based his testimony. Exhibits 1 and 2. He also provided copies of photographs, taken November 20, 1993, of refuse and garbage on the shore and views from inside his parents' house. Exhibits 3 through 33. He was asked if he had continued his documentation of the conditions of the shore after Nov. 20, 1993 and he stated that he had not. He

was asked if he had contacted the company or the Department at any time to register his complaints in order to resolve the issues he raised and he stated that he had not.

The president of the company responded that while the pens can sometimes shift, he denied that the pens have ever been intentionally moved. He testified that the company has made efforts to reduce visual impacts through the reduction of personnel and the number of deliveries to the site, and the use of older personnel who are more mature and aware of the need for appropriate language. The applicant has also conducted weekly clean ups on the shore up to Comstock Point. Based on his observations of the shore, he testified that beach grass is present regardless of the presence of salmon farms and disputes any alleged connection between the two.

A consultant contracted by the Department to assist with the industry funded finfish monitoring program was asked his opinion on beach grass growth and if it can be caused by nutrients from fish farms. He explained that the currents in the area are strong and parallel to the shore, predominantly north and south, not west towards the shore. Nutrients are dissolved into solution in water and a recent study found that the majority of dissolved nutrients for Cobscook Bay originate from offshore. Therefore the beach grass and fish nutrient connection is not likely. He explained that beach grasses are normally considered beneficial to its habitat and it is also not unusual for beach grass to grow on a beach.

A federal agency representative asked if the homes on this property were connected to the new town sewage treatment plant. The response was “no”, however the witness in opposition to the renewal testified that his parents' septic tank is located 1000 feet from the shore. None of the homes on the North Lubec shore are connected to the sewage treatment plant.

Findings of Fact

According to Department records the lessee has complied with the finfish monitoring program required by the Department. Testimony and evidence indicate that the lessee has complied with the conditions and terms of the lease including those pertaining to marking which are mandated by recent changes in the law, 12 M.R.S.A. §6957. There was testimony alleging a high level of refuse on the riparian shoreline. That evidence was primarily based on documentation from one day, November 20, 1993, and there was no evidence of a follow-up complaint to either the lessee or the Department. The applicant recognizes the need to inspect the shores by its fish farms and to collect any debris from its operation. The applicant testified that it requires its workers to conduct weekly clean ups along the shore to Comstock Point. The applicant also testified that it would continue this practice. Based on the testimony and evidence about the uncertainty of the source of any refuse and the persistence or frequency of the problem coupled with the voluntary weekly clean ups by the applicant, I find that renewal of the lease is in the best interests of the State. However, to insure that the alleged problem does not occur in the future, a condition will be added to the lease that requires the lessee to maintain records at its facility documenting its clean up activities on the nearby shore and at the lease site.

The lessee is found to have conducted aquaculture, raising Atlantic salmon, on the lease during its tenancy since 1990. Based on the testimony of the applicant's representative, the lessee has agreed to relinquish those portions of the existing 5 acre lease that are no longer in use. That represents the portion of the existing lease that is nearest to the shore. The lessee shall provide updated metes and bounds with corner geodetic coordinates (in NAD83/WGS84) that define the existing lease area that will be retained and identify the area to be relinquished. Department records indicate that the lessee does not hold leases exceeding an aggregate of more than 150 acres.

Conclusions of Law

The evidence in the hearing record held November 17, 1997, supports a finding that the lessee meets the requirements for the renewal for an aquaculture lease set forth in 12 M.R.S.A. §6072(12).

Decision

The Commissioner of Marine Resources grants the requested lease renewal of Connor's Aquaculture, Inc., located in Johnson Bay, Lubec, Maine for a period of ten years to September 2, 2007 for the purpose of cultivating Atlantic salmon and rainbow trout using pen culture techniques. Connor's Aquaculture, Inc. remains subject to the same terms, conditions, and obligations set forth in the original lease plus one additional record keeping condition. The company also has agreed to relinquish the unused portion of the existing lease. The applicant shall continue to pay the State of Maine rent in the amount of \$50.00 per acre per year. The applicant shall continue to post a bond or establish an escrow account in the amount of \$5000.00.

Conditions to be Imposed on Lease

The following conditions are in place on this lease:

Signs must be placed on the boundaries of the lease area indicating the presence of submerged mooring cables and nets. Lobster fishing will be permitted in the open water areas between the lessee's pens.

The following additional condition is placed on this lease:

The lessee shall maintain at its main facility in Eastport a record of clean up activities on the nearby shore and lease. The records shall include a signature of the supervisor of the cleanup activity, and the date conducted and the results of the clean up. These records shall be made available to the Department upon request or for inspection during normal business hours.

The Commissioner may commence revocation proceedings if he determines that substantial aquaculture has not been conducted within the preceding year, or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated:

E. Penn Estabrook, Commissioner (Acting)
Department of Marine Resources